

MONTANA LEGISLATIVE HISTORY

Chapter 364 ^{1st} 2001

Bill H _____ S 298 Original bill & history X c

H. Committee on BUSINESS & LABOR

Hearing Date(s) 3/20 X c

EXEC ACTION 3/27 X c

_____ c

_____ c

Date Out _____ c

S. Committee on BUSINESS & LABOR

Hearing Date(s) 2/7 X c

EXEC ACTION 2/9 X c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

Bill Draft Number: LC0956**Bill Type - Number:** SB 298**Short Title:** Limit the amount of contractor retainage**Primary Sponsor:** Bill Glaser**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 57

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/23/2001			
(S) Signed by Governor	04/23/2001			
(S) Transmitted to Governor	04/13/2001			
(H) Signed by Speaker	04/10/2001			
(S) Signed by President	04/10/2001			
(S) Returned from Enrolling	04/07/2001			
(C) Sent to Printing	04/06/2001			
(S) Sent to Enrolling	04/05/2001			
(S) 3rd Reading Passed as Amended by House	04/05/2001	48	1	
(S) Scheduled for 3rd Reading	04/05/2001			
(S) 2nd Reading House Amendments Concurred on Voice Vote	04/04/2001	49	0	
(S) Scheduled for 2nd Reading	04/04/2001			
(H) Returned to Senate with Amendments	03/31/2001			
(H) 3rd Reading Concurred	03/31/2001	98	2	
(H) Scheduled for 3rd Reading	03/31/2001			
(H) 2nd Reading Concurred	03/29/2001	100	0	
(H) Scheduled for 2nd Reading	03/29/2001			
(C) Sent to Printing	03/27/2001			
(H) Committee Report--Bill Concurred as Amended	03/27/2001			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred as Amended	03/27/2001	19	0	(H) Business and Labor
(H) Hearing	03/20/2001			(H) Business and Labor
(H) Referred to Committee	03/03/2001			(H) Business and Labor
(H) First Reading	03/03/2001			
(S) Transmitted to House	02/19/2001			
(S) 3rd Reading Passed	02/19/2001	49	1	
(S) Scheduled for 3rd Reading	02/19/2001			

(C) Sent to Printing	02/17/2001		
(S) 2nd Reading Passed as Amended on Voice Vote	02/17/2001	48	0
(S) 2nd Reading Motion to Amend Carried on Voice Vote	02/17/2001	48	0
(S) Scheduled for 2nd Reading	02/17/2001		
(S) 2nd Reading Passed Consideration	02/13/2001		
(S) Scheduled for 2nd Reading	02/13/2001		
(C) Sent to Printing	02/09/2001		
(S) Committee Report--Bill Passed as Amended	02/09/2001		(S) Business and Labor
(S) Committee Executive Action--Bill Passed as Amended	02/09/2001	9	0 (S) Business and Labor
(S) Hearing	02/07/2001		(S) Business and Labor
(S) Fiscal Note Printed	02/01/2001		
(S) Fiscal Note Signed	01/31/2001		
(S) Fiscal Note Received	01/31/2001		
(S) Fiscal Note Requested	01/26/2001		
(C) Introduced Bill Text Available Electronically	01/23/2001		
(S) Referred to Committee	01/23/2001		(S) Business and Labor
(S) First Reading	01/23/2001		
(S) Introduced	01/23/2001		
(C) Draft Delivered to Requester	01/22/2001		
(C) Draft Ready for Delivery	01/15/2001		
(C) Draft in Assembly/Executive Director Review	01/15/2001		
(C) Draft in Final Drafter Review	01/12/2001		
(C) Bill Draft Text Available Electronically	01/12/2001		
(C) Draft in Input/Proofing	01/12/2001		
(C) Draft to Drafter - Edit Review [CAJ]	01/12/2001		
(C) Draft in Edit	01/12/2001		
(C) Draft in Legal Review	01/12/2001		
(C) Draft On Hold	01/02/2001		
(C) Draft to Requester for Review	12/15/2000		
(C) Draft On Hold	12/05/2000		
(C) Draft Request Received	12/05/2000		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Glaser	Bill	

Drafter	Campbell	Bart
Primary Sponsor	Glaser	Bill

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Contracts (see also: Public Contracts)		Simple	CONT

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: N
Session Law Ch. Number: 364

DEADLINE

Category: General Bills

Transmittal Date: 02/23/2001

Return (with 2nd house amendments) Date: 03/31/2001

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-01	

SENATE BILL NO. 298
INTRODUCED BY B. GLASER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PERSON WHO WITHHOLDS RETAINAGE FROM A CONSTRUCTION CONTRACTOR TO DEPOSIT THE RETAINAGE IN AN INTEREST-BEARING ACCOUNT AND TO PAY THE INTEREST ON THE RETAINAGE TO THE CONSTRUCTION CONTRACTOR AT THE TIME THAT THE RETAINAGE IS PAID; LIMITING THE AMOUNT OF RETAINAGE THAT MAY BE WITHHELD TO 5 PERCENT OF THE TOTAL AMOUNT TO BE PAID TO A CONSTRUCTION CONTRACTOR; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Retainage to be deposited in interest-bearing account -- interest to be paid to construction contractor -- enforcement -- definitions. (1) A person who withholds retainage from a construction contractor shall deposit the retainage into an interest-bearing account. At the time that retainage is paid to the construction contractor, the person shall also pay to the construction contractor the interest on that retainage.

(2) The obligation to deposit retainage in an interest-bearing account or to pay interest on the retainage to the construction contractor, or both, pursuant to this section, may be enforced by a civil action in district court in the county in which the construction contractor resides.

(3) The following definitions apply to [section 2] and this section:

(a) "Construction contractor" has the meaning provided in 39-9-102.

(b) "Person" means an individual, sole proprietorship, partnership, corporation, firm, or other private business entity.

(c) "Retainage" means an amount of money otherwise owed to a construction contractor for construction services, construction materials, or both, that is withheld from payment to the construction contractor.

NEW SECTION. Section 2. Limit on retainage. (1) The maximum retainage applied to construction contracts subject to the provisions of this part may not exceed 5% if the construction contractor is performing by the terms of the contract.

(2) The retainage percentage withheld by an owner, as provided in subsection (1), from a construction contractor is the maximum retainage that a construction contractor may withhold from a subcontractor.

NEW SECTION. **Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [sections 1 and 2].

NEW SECTION. **Section 4. Applicability.** [This act] applies to contracts entered into or renewed after October 1, 2001.

- END -

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 7, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)

Members Excused: None.

Members Absent: Sen. Don Ryan (D)

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 48, 2/4/2001; SB 298,
2/4/2001; HB 138, 2/4/2001
Executive Action:

SENATOR VICKI COCCHIARELLA asked why there was a mandatory minimum prison sentence.

Neil Peterson said they were looking at the severity of the fourth offense.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 28.1}

SENATOR MIKE SPRAGUE, SD 6, BILLINGS, closed without comment.

HEARING ON SB 298

Sponsor: **SENATOR BILL GLASER, SD 08, YELLOWSTONE COUNTY**

Proponents: **Carl Schweitzer, Subcontractors Association**
 Zack Pallister, Big Sky Plumbing and Heating
 Lynn Perkins, Fire Supression Systems
 Dennis Iverson, Electrical Contractors Association

Opponents: **Robert Throssell, Montana Technical council**
 Joe Hansen, Edsall Construction

Informational Witness: **Russ Katherman, Dept of Administration**

Opening Statement by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 6.9}

SENATOR BILL GLASER, SD 08, YELLOWSTONE COUNTY, said this bill deals with the retainage on a construction project, which is that amount of money held by the owner to see that performance happens on a job. This bill says that the retainage is the property of the contractor or subcontractor and they ought to be compensated for somebody else using their money. It also changes the percentage amount you can withhold from 10% to 5%.

Proponents' Testimony:

Carl Schweitzer, Subcontractors Association, said when a subcontractor does the job he submits the bill to the owner or general contractor and gets paid 90% of what is owed. He stated that the other 10% should be put into an interest bearing account.

Zack Pallister, Big Sky Plumbing and Heating, said he has to pay his bills and his people, and the 10% that is held out is really his profit.

Lynn Perkins, Fire Supression Systems, said the 10% retainage is not fair.

Dennis Iverson, Electrical Contractors Association, said he supports this bill. He said it is basic economics; if you use someone else's money you have to pay for it.

Opponents' Testimony:

Robert Throssell, Montana Technical Council, opposed this bill because it impinges the right of people to contract, and also the money is really not the subcontractors money until the project is completed to the specifications. The subcontractors don't have to take the job, or else they can build the amount that will cover their expenses into the contract.

Joe Hansen, Edsall Construction, said this is a contractual issue and not something that should be legislated.

Informational Witness: Russ Katherman, Department of Administration said there would be no impact on public projects.

Questions from Committee Members and Responses:

CHAIRMAN TAYLOR said sometimes he has wanted to retain some of the total until there is satisfaction with the job.

SENATOR GLASER said he hadn't thought of the mechanics of the small home owner.

Carl Schweitzer said he would see residential construction as being excluded from this provision.

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 6.8}

SENATOR BILL GLASER, SD 08, YELLOWSTONE COUNTY, said as things are now retention is 10%, no interest. He further stated that sometimes there is only about 4% profit, so the subcontractors have to wait for their profit until the retainage is released.

HEARING ON HB138

DATE 2-7-2001

DATE _____

2-7-2001

[illegible]

DATE 2-7-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB 48, SB 298, HB 138

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Timothy W. King	252-2949	MYSELF	SB48		X
Neil Peterson	444-1941	DOR	SB48	X	
Lynn Perkins	586-9510	FSSI	SB 298	X	
Krista Blazer	442-7450	MT Beer & Wine Wholesale Assoc	SB48	X	
Brian Clark	752-1455	FunBarriage, Inc.	SB48	X	
Greg Carter	543-6634	Vehar Wine Inc	SB48	X	
Mike Parker	452-1839	Pounington, Inc	SB48	X	
Kurt Winegardner	582-8739	WINEGARDNERS WINES	SB48	X	
Carter McFarland	232-0390	McFarland	SB48	X	
Dale Markovich	494-3793	Roach & Smith Distr. Inc	SB48	X	
DAVE Hewitt	442-2675	Clauson Dist Co.	SB48	X	
JOHN DELANO	2-3410	Miller Beer	SB48		
Brian Smith	449-3005	MT BREWERS ASSOC.	SB48	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

go to next
sheet →

DATE 2-7-2001SENATE COMMITTEE ON Business & LaborBILLS BEING HEARD TODAY: SB48, SB298, HB138**PLEASE PRINT**

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
David Scrivner	442-1451	Self	SB48		X
Mona Jamison	442-5581	WINE INT	SB48		X
Riley Johnson	443-3797	NFTB	SB48 HB138		
Kurt Alme	444-2462	DOR / Gov. Office		X	
Julie Millam	442-6220	MTCC		X	
Mary Arnold	449-2833	Self	SB48		X
Patrick M. M. to be.	873-3845	LSO of M.	SB48	X	
Aidan Myhre	442-6383	MT Chamber of Commerce	SB48	X	
Robert Zucconi	442-1142	Zeke's Dist. Co.	SB48	X	
Zach Puckert	3-0336	Brigley P&H	SB298	X	
Robert Throssell	442-0230	MT Technical Council	SB298		X
Dennis Iverson	442-1900	NATL. ELECT. CONTRACTORS ASSOC. (N.E.C.A)	298	X	
Bill Bentley	2-8330	NECA	298	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-7-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB48, SB298, HB138

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Russ KATHERMAN	444-3332	D of A	298		
Cal Schweitzer	457-1321	ASAm	298	X	
Tom Ebzery	441-7531	Mt Contractors Assn.	298		X
Jol Hansen	587-0614	Edsall Const./MCA	298		X
Riley Johnson	408-3757	Check Into Cash, Inc	HB 138	X	
Chris Olson	444-2091	Dept of Commerce	HB 138	X	
Bennie Harrington	652-9199	Mt Financial Services	HB 138	✓	

INFO
2

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 9, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 321, 2/6/2001; HB 154,
2/6/2001; HB 172, 2/6/2001; HB
145, 2/6/2001
Executive Action: SB 321; HB 154; SB 298; HB 145

Questions from Committee Members and Responses:

SENATOR ED BUTCHER asked if Central Montana Hospital was included in this.

Bob Olson said that it wasn't because it is a private hospital.

SENATOR COCCHIARELLA asked why it was only limited to 5th, 6th, and 7th class counties.

Jerome Moraslco, replied that the bigger counties have private, non-profit hospitals and county owned hospitals are only in the smaller communities.

SENATOR DON RYAN said a hospital in Great Falls which was a county facility had to go private because they had no flexibility in the plans.

CHAIRMAN TAYLOR asked what **SENATOR BILL TASH'S** feeling on the bill was.

SENATOR TASH said he wants district hospitals included in this bill. He submitted written testimony from the hospital administrator in Dillon. **EXHIBIT(bus33a06)**

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 4.9}

REPRESENTATIVE LINDA HOLDEN, HD 86, VALIER, said the smaller hospitals may not be able to make it without this bill. She stated that the people in the small communities are concerned they may lose their hospitals.

EXECUTIVE ACTION ON SB 298

Discussion: **Bart Campbell** explained the amendments.

EXHIBIT(bus33a07) **CHAIRMAN TAYLOR** said he thought it would be too hard to determine when interest bearing accounts would begin, and it would create litigation. **SENATOR COCCHIARELLA** said she did not agree with the amendment at all, because it would let a bunch of people off the hook. **SENATOR BUTCHER** said he agrees with the \$200,000 limit, but he does not agree with not putting the money in an interest bearing account. He said this would encourage the one holding the money to give it back where it is due in a timely manner. **SENATOR SPRAGUE** said he doesn't have a problem with this bill.

Motion/Vote: SEN. COCCHIARELLA moved that SECTIONS 2,3,and 6 OF the AMENDMENT BE ADOPTED. Motion carried unanimously.

Motion/Vote: SEN. TAYLOR moved that SECTIONS 1 & 4 OF the AMENDMENT BE ADOPTED. Motion carried 6-3 with Cocchiarella, Roush, and Ryan voting no.

Motion/Vote: SEN. TAYLOR moved that SB 298 DO PASS AS AMENDED. Motion carried unanimously.

HEARING ON HB 145

Sponsor: REPRESENTATIVE RICK DALE, HD 39, WHITEHALL

Proponents: Eric Fehlic, Department of Commerce
Bob Pavlovich, IBEW

Opponents: None

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 23.5}

REPRESENTATIVE RICK DALE, HD 39, WHITEHALL, said this bill clarifies what has been understood as a long standing distinction between the building code and the electrical code by clarifying terminology, and the authority to adopt and enforce an electrical code separate from the authority found in the building code.

Proponents' Testimony:

Eric Fehlic, Department of Commerce, said this is a house cleaning bill and handed in his written testimony.

EXHIBIT(bus33a08)

Bob Pavlovich, IBEW, said he concurs with the previous testimony and supports this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

not edited

Amendments to Senate Bill No. 298
1st Reading Copy

Requested by Senator Mike Taylor

For the Senate Business and Labor Committee

Prepared by Bartley Campbell
February 9, 2001 (7:56AM)

SENATE LABOR & EMPLOYMENT
SENATE NO. 7
DATE 2-9-2001
BILL NO. HB172

1. Title, lines 4 through 7.

Strike: "REQUIRING" on line 4 through "PAID:" on line 7

2. Title, line 8.

Following: "CONTRACTOR"

Insert: "FOR A RESIDENTIAL PROJECT WITH A TOTAL COST OF LESS THAN
\$200,000"

3. Title, line 8.

Following: " ; "

Insert: "REMOVING THE EXEMPTION IN TITLE 28, CHAPTER 2, PART 21,
FOR IMPROVEMENTS TO REAL PROPERTY INTENDED FOR RESIDENTIAL
PURPOSES; REPEALING SECTION 28-2-2107, MCA;"

4. Page 1, lines 13 through 27.

Strike: section 1 in its entirety

Renumber: subsequent sections

5. Page 1, line 30.

Following: "contracts"

Insert: "for residential projects with a total cost of less than
\$200,000"

6. Page 2, following line 4.

Insert: "NEW SECTION. Section 2. {standard} Repealer. Section
28-2-2107, MCA, is repealed.

{Internal References to 28-2-2107: None.}"

Renumber: subsequent sections

- END -

DATE 2-9-2001

[illegible]

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 2-8-2001 BILL NO. 50298 NUMBER 75

MOTION:

Sen C moves ^{2nd.} 2, 3, 6
on Amendment

[illegible]

DATE 2-8-2001 BILL NO. 56298 NUMBER 46

MOTION: Denton moves Amendment
Sections: 1, 4 DO PASS

[illegible]

DATE 2-8-2001 BILL NO. SB298 NUMBER 17

MOTION: Sen Taylor moves SB 298 DO PASS
As Amended

[illegible]

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 20, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Nancy Fritz (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB277, SB292, SB298, SB327,
3/16/2001
Executive Action: SB314, HB357, SB373, SB277

Opponents' Testimony:

Mr. Lange said he had run for a legislative district. He said he felt by passing this bill the committee would be increasing the size of government and fees. He said the bill would benefit a few plumbing contractors and take away the rights of taxpayers. He told the committee that education was a better tool. He said, "We do need a big bureaucracy, we need common sense and education."

Mr. Blatti said he appreciated the concern for public health and safety, but had other questions like "how long would you have to wait for an inspector." He said he knew of a business which had waited four weeks and was still waiting. He said he thought this bill was "a foot in the door to further intrude into our lives." He said if the committee would "look into their hearts, they would see this bill was not the thing to do."

Questions from Committee Members and Responses:

REP. WHITAKER said there was an exemption for drain fields, what about lawn sprinklers. **Mr. Jellison** said lawn sprinklers are considered non-potable water, and would not be covered.

{Tape : 2; Side : B; Approx. Time Counter : 0}

REP. BROWN said to **Mr. Jellison** this bill is about protecting public safety, "How do we know it is in danger?" **Mr. Jellison** said they get complaints from subsequent home buyers, typically who are headed to court.

Closing by Sponsor:

SEN. SHEA said the bill does not require the homeowner to be a licensed plumber, it requires an inspection. "This will insure that subsequent owners have received a safety inspection," she said.

HEARING ON SB298

Sponsor: SEN. BILL GLASER, SD8, BILLINGS

Proponents: Carl Schweitzer, Sub-Contractors Assn.
Jim Wolfe, Polar Electric, Helena
Jack McCleary, Action Electric, Billings
Dennis Iverson, NECA
Jerry Lyford, Master Plumbing, Kalispell
Bob Mack, Master Plumbing, Whitefish

Opponents: Tom Ebsery, MCA, Billings
Robert Throssell, Montana Technical Council
Jeff Feiss, Montana Telecom

Opening Statement by Sponsor:

SEN. BILL GLASER, SD8, BILLINGS, said the bill limited the amount of retainage to no more than 5% except for residential projects less than \$200,000. He said the bill does less in its current form that originally was intended.

Proponents' Testimony:

Mr. Schweitzer said he had asked **SEN. GLASER** to carry the bill. He noted the bill copycats what this legislature did before for public construction, and there have been no problems with that. He said this would limit the negotiating power because some contractors use the retainage to get the work. He asked the committee to not punish everybody because of these bad apples. He said this bill will get the best people on the project at the best price.

Opponents' Testimony:

Mr. Wolf called it a good bill and said if it was good enough for the state it was good enough for private contracts.

Mr. McCleary testified that he had \$200,000 in outstanding retainage at the present.

Mr. Iverson said the small businesses should not be expected to bankroll projects.

Mr. Lyford said a 5% retainage is a reasonable amount and two years is way too long to hang on to money once the work is done.

Mr. Mack said he supported the bill.

Opponents Testimony:

Mr. Ebsery said he opposed the bill for several reasons. He did not think the legislature should be trying to solve issues which involved contractual relationships between parties. He objected to the 5% because he said the difference in private and state jobs were no bonds were required for private and the 10% retainage offset this. He also questioned why the residential construction should be limited to \$200,000. He said if the bill moved forward the 5% should be changed to 10% to make up for the

bonding issue. He asked the committee to table the bill.

EXHIBIT(buh63a04)

Mr. Throssell said the purpose of retainage is to see that the job gets done.

Mr. Feiss said the retainage terms vary from 5-10% depending on the type of work and it has the potential of conflict with federal contracts.

Questions from Committee Members and Responses:

REP. LAIBLE asked **Mr. Ebsery** what the accepted retainage rate was. **Mr. Ebsery** said 10%. **REP. LAIBLE** asked if the state has gone to 5% because they require bonding in case of default, and could they amend the bill to require a bond if the rate went to 5%. **Mr. Ebsery** said no, but a contract could require that and that he didn't believe every subcontractor was on a state required bond. **REP. LAIBLE** said if there was trouble with a sub-contractor, they shouldn't use them, and if there was trouble with a general contractor, they shouldn't pay them. **Mr. Ebsery** said is was a small state and there were not always a lot of options.

REP. BROWN said 16 years ago he bought his home and he had it remodeled under a 20% retainage contract. He said he found out the general contractor hadn't paid the subs, and he was able to pay them with the retainage. He said with this bill he wouldn't have been able to do that.

Closing by Sponsor:

SEN. GLASER said he did a project once that he didn't get paid for three years. He said the owner not only retained the 10%, but the last month's work. He said traditionally, 5% has been all that was needed. He concluded if he didn't think this was a problem, he wouldn't be carrying this bill.

EXECUTIVE ACTION ON SB314

Motion: **REP. GALVIN-HALCRO** moved that **SB314 BE CONCURRED IN.**

Discussion:

Motion: **REP. MATTHEWS** moved that **SB314 BE AMENDED.**

Discussion:

TESTIMONY OF MONTANA CONTRACTORS ASSOCIATION IN OPPOSITION
TO SENATE BILL 298 (Glaser) Limiting the amount of retainage to be withheld

Mr. Chairman and Members of the House Business and Labor Committee. For the record I am Tom Ebzery, a Billings attorney representing the Montana Contractors Association. MCA is a trade association representing over 130 contractors in every county of Montana.

We oppose this bill for several reasons. The first is the use of the legislature to settle private contract matters between contractors and subcontractors. This is just one of many bills offered this time on behalf of the subcontractors to have the legislature interfere with and influence contractual relationships between those parties.

Second we object to the limitation of retainage to 5%. We are well aware that the 1999 legislature imposed a 5% limitation on public contracts but this is clearly distinguishable because in the case of public contracts the state requires security or bonding. Many of the subcontractors are not bonded and in certain instances it is necessary to retain more than 5%. This protects the owner and the contractor and helps to replace the lack of bond.

Third, we object to excluding residential projects costing less than \$200,000. This is purely an arbitrary number and if the reasons given by the proponents of this bill are to be credible it makes little sense to make a large exemption. If the subcontractors believe there is a problem warranting the state to referee, that problem clearly is not limited to those projects costing more than \$200,000.

Fourth, we continue to oppose the continued efforts of the subcontractors to repeal 28-2-2107 which is the exception for certain residential dwellings. That language reads as follows: The provisions of (Part 21 dealing with payment of Construction Contractors and Subcontractors) do not apply to improvements to real property intended for residential purposes that consist of four or fewer residential units. That language was in HB 448 the prompt payment bill introduced by Representative Forrester. You removed this language in that bill and here it is back again. I hope you will remove existing law and leave the existing language in place.

Should the Committee choose to move this bill forward and we hope you don't, we would urge that you change the 5% maximum retaining to 10% to make up for the bonding or security issue I discussed above.

Members of the Committee. It is getting late in the session to be hearing legislation asking the legislature to get involved in private contract matters. The subcontractors are perfectly able to protect themselves and hold their own against contractors in private building projects. Lets leave the legislature out of this and table this bill.

HOUSE OF REPRESENTATIVES

ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 20, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		✓
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz			✓
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reimicke	✓		
Rep. Dave Gallik	✓		✓
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE March 20, 2001

BILL NO. SB 298

SPONSOR(S) Sen. Glaser

"Contractor Retainage"

TYPE

PROPOSER (P)

OPPOSER (O)

INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

POI	Carl Schwitzer	Helena	AS AM
POI	ROBERT THROSSALL	505. West ^{Helena} Chance	MT Technical Council
POI	Breg Van Housen	Helena	State Farm Ins Co
POI	John Fitzpatrick	Helena	Touch Marine
POI	Jack McKeary	Billings	Action Elec
POI	Tom Ebzery	Billings	MT Contractors Assn
POI			
POI	Jim Wolfe	HELENA	POLAR ELECTRIC
POI	Bill Bentley	Helena	NECA
POI	DENNIS IVERSON	HELENA	N.E.C.A
POI	Terry Hybrid	Master Pl. Kalispell	Master Plumber
POI	Bob Mack	Whitefish	Master Plumber
POI	Geoff Feiss	Helena	NAT. Telecom Assn.
POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 27, 2001 at
7:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Rod Bitney, Vice Chairman (R)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB650, 3/23/2001
Executive Action: SB405, SB480, SB340, SB445,
HB650, HB593, SB469, SB474,
SB298, SB327, SB465

EXECUTIVE ACTION ON SB469

Motion: REP. BOOKOUT-REINICKE moved that SB469 BE CONCURRED IN.

Discussion:

Motion/Vote: REP. GALVIN-HALCRO moved that SB469 BE AMENDED.

Motion carried unanimously.

Motion/Vote: REP. GALVIN-HALCRO moved that SB469 BE CONCURRED IN AS AMENDED. Motion carried 15-4 with Fritz, Juneau, Keane, and Musgrove voting no.

REP. LAWSON will carry the bill in the House.

EXECUTIVE ACTION ON SB474

Motion: REP. LAWSON moved that SB474 BE CONCURRED IN.

Discussion:

Motion: REP. LAIBLE moved that SB474 BE AMENDED.

{Tape : 3; Side : B; Approx. Time Counter : 0}

Vote: Motion carried unanimously.

Motion/Vote: REP. LAIBLE moved that SB474 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB298

Motion: REP. BOOKOUT-REINICKE moved that SB298 BE CONCURRED IN.

Discussion:

Motion/Vote: REP. LAWSON moved that SB298 BE AMENDED. Motion carried 18-1 with Whitaker voting no.

Motion: REP. LAWSON moved that SB298 BE CONCURRED IN AS AMENDED.

Discussion:

Motion/Vote: REP. KEANE moved that SB298 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. KEANE moved that SB298 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB327

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 27, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		✓
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		✓
Rep. Jim Whitaker	✓		
Rep. Rod Bitney			✓
Rep. Sylvia Bookout-Reinicke	✓		✓
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		



HOUSE STANDING COMMITTEE REPORT

March 27, 2001

Page 1 of 2

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 298** (third reading copy - blue) be concurred in as amended.

Signed: _____

Representative Joe McKenney, Chair

To be carried by Representative Gary Forrester

And, that such amendments read:

1. Title, line 8.

Strike: "5"

Insert: "10"

2. Title, line 9 through line 11.

Strike: "\$200,000" on line 9 through "REPEALING" on line 11.

Insert: "\$400,000; AMENDING"

3. Page 2, line 4.

Strike: "5%"

Insert: "10%"

4. Page 2, line 8.

Strike: subsection (3) in its entirety

5. Page 2, line 10.

Strike: section 2 in its entirety

Insert: "Section 2. Section 28-2-2107, MCA, is amended to read:

"28-2-2107. Exception for certain residential dwellings.

The provisions of this part do not apply to residential projects or improvements to real property intended for residential purposes that consist of four or fewer residential units with a total cost of less than \$400,000."

Committee Vote:

Yes 19, No 0.

-END-

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